

TCEQ DOCKET NO. 2006-1869-MWD

**APPLICATION BY
GRASON VOLENTE
INVESTMENTS, LTD.
FOR PERMIT NO.
WQ0014563-001**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 FEB 14 PM 2:29
CHIEF CLERK'S OFFICE

APPLICANT'S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

Grason Volente Investments, Ltd. ("Applicant"), pursuant to 30 Texas Administrative Code (TAC) § 55.209(d), files this Response to the hearing request of Linda Carter. Ms. Carter's request for a "public hearing" should be denied because (1) the request fails to substantially comply with the requirements of 30 TAC § 55.201(d), (2) Ms. Carter has not demonstrated that she is an affected person with a personal justiciable interest affected in a way that is different from the general public, and (3) the request does not raise any issues of disputed fact.

1. Ms. Carter's request fails to substantially comply with the requirements of 30 TAC § 55.201(d).

Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the Commission may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, section 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility. Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4).

First, Ms. Carter does not explain in her letter how far her property is from the proposed facility; she simply states that her home and business are on the cove "which is line with the flow" of the proposed effluent irrigation field. Second, Ms. Carter does not list all of the relative and material disputed issues of fact that were raised during the comment period and that are the basis for her hearing request. It is not sufficient to simply express concern about keeping the lake clean and pure.

Finally, Ms. Carter did not request a "contested case hearing" as required by rule. 30 TAC § 55.201(d)(3). Ms. Carter requested a "public hearing." Ms. Carter's request was sent to the Commission in February 2005 shortly after the Receipt of Application and Intent to Obtain a Water Quality Permit Proposed Permit No. WQ0014563001 was published. A public meeting was held by the TCEQ on April 25, 2006, approximately one month after the second notice was mailed. Had Ms. Carter intended to request a contested case hearing rather than a public meeting, she could have submitted such a request as provided for by the second notice and the Executive Director's response to comments. However, no other additional correspondence was received by the TCEQ after her initial letter. Her request should be construed, in light of the chain of events, as a request for a public meeting, which occurred, not as a trial-like contested case hearing. Similar language was used by Representative Todd Baxter, which the TCEQ clarified was intended to request a public meeting rather than a contested case hearing.

2. Ms. Carter is not an affected person.

In determining whether a person is an affected person, the Commission evaluates whether the requestor is a person with a justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. In making that evaluation, the Commission must

consider, among others, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources. 30 TAC § 55.203(c). Under these criteria, Ms. Carter is not an affected person.

Ms. Carter is not adjacent to the property where the proposed drip irrigation site (also referred to as the "effluent drainfield") will be located and it appears that Ms. Carter's property is more than one-half mile from the site. *See* Exhibit 1, which identifies Ms. Carter's property in relation to the effluent drainfield. There will be no impact to her property. With respect to the impact of the drip irrigation site on Travis Lake, there will be none because the permit is a no-discharge permit. No effluent is permitted to leave the site. Additionally, the drip irrigation site does not sit on the banks of the lake. It is at least a 1000 feet from the edge of the cove and on the other side of Lime Creek Road from the lake. Moreover, Volente Peak Wastewater Treatment Plant will be required to produce effluent with a daily average concentration that does not exceed 5 mg/l BOD₅, 5 mg/l TSS, 2 mg/l NH₃-N, and 1 mg/l Total P, which is much better quality effluent than the quality of effluent produced by other facilities on Lake Travis¹ and septic systems that line the lake. The water quality in Travis Lake is far more likely to be affected by the septic systems that line its banks than by effluent produced at the Volente Peak Wastewater Treatment Plant. For these reasons, Ms. Carter is not an affected person.

¹ *See e.g.* Cypress Creek Crossings, Ltd., TCEQ Permit No. WQ14203-001, located on the Cypress Creek Arm of Lake Travis. The Crossings WWTP is only required to produce effluent with a daily average concentration of 20 mg/l BOD₅ and 20 mg/l TSS. *See e.g.*, 620 Utility Co., Inc., TCEQ Permit No. WQ13953-001, located at Commander's Point just off of FM 620. The Commander's Point WWTP is only required to produce effluent with a daily average concentration of 20 mg/l BOD₅ with a reporting requirement for the daily average concentration of Total Nitrogen.

3. Ms. Carter's request does not raise any issues of disputed fact.

A hearing request may only be granted if it raises disputed issues of fact. *See* 30 TAC § 55.211. Ms. Carter simply states that "[i]t is imperative that we keep this lake clean and as pure as possible" Ms. Carter's request, however, does not identify anything in the application, in the draft permit, or in the Executive Director's response to comments which she disputes or which she believes fails to comply with the requirements of Chapter 26 of the Texas Water Code, and the TCEQ regulations. Because Ms. Carter has raised no issue of disputed fact, her request for a hearing should be denied.

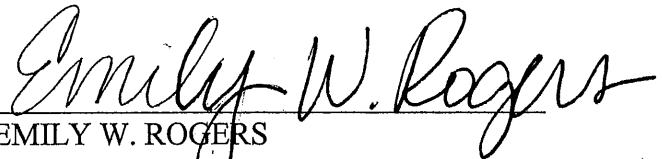
4. Conclusion.

Ms. Carter's request fails to substantially comply with the TCEQ rules regarding contested case hearing requests. Moreover, Ms. Carter is not an affected person and she has not raised any issues of disputed fact. For these reasons, the Applicant respectfully requests that Ms. Carter's hearing request be denied, and the Commission issue proposed Permit No. WQ0014563-001 to Grason Volente Investments, Ltd.

Respectfully submitted,

BICKERSTAFF, HEATH,
POLLAN & CAROOM, L.L.P.
816 Congress Avenue
Suite 1700
Austin, Texas 78701-2443
(512) 472-8021
(512) 320-5638 (FAX)

EMILY W. ROGERS
State Bar Number 24002863

BY: 
EMILY W. ROGERS
State Bar Number 24002863

Attorney for Grason Volente Investments, Ltd.

CERTIFICATE OF SERVICE

I hereby certify, by my signature below, that a true and correct copy of the above and foregoing was forwarded via First Class Mail, hand delivery or facsimile on February 12, 2007 to the parties on the attached Mailing List.


EMILY W. ROGERS

MAILING LIST
GRASON VOLENTE INVESTMENTS, LTD.
TCEQ DOCKET NO. 2006-1869-MWD; PERMIT NO. WQ0014563001

FOR THE APPLICANT:

Jason Hammonds
Grason Volente Investments, Ltd.
7171 Highway 6 North, Ste. 100
Houston, Texas 77095-2563
(281) 656-0555
(281) 656-0540 (Fax)

Fred Ramirez, P.E.
Baker-Aicklen & Associates, Inc.
405 Brushy Creek Road
Cedar Park, Texas 78613
(512) 260-3700
(512) 260-3701 (Fax)

FOR THE EXECUTIVE DIRECTOR:

Michael Northcutt, Jr., Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-0600
(512) 239-0606 (Fax)

Joel Klumpp, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-4453
(512) 239-4114 (Fax)

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-6363
(512) 239-6377 (Fax)

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Jody Henneke, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-4000
(512) 239-4007 (Fax)

FOR ALTERNATIVE DISPUTE RESOLUTION:

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-4010
(512) 239-4015 (Fax)

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3300
(512) 239-3311 (Fax)

REQUESTER:

Linda Carter
16120 Wharf Cv.
Volente, Texas 78641-6006

WITHDRAWAL OF REQUEST:

Jo R. Kimbro
and on behalf of Charles L. Dwyer
8034 Navajo Pass
Volente, Texas 78641-6123

PUBLIC OFFICIAL COMMENT:

The Honorable Todd Baxter
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

INTERESTED PERSONS:

Scott Attwood
16513 Jackson St.
Volente, Texas 78641-6044

Lee Bass
7617 Debbie Dr.
Volente, Texas 78641-9654

Jim & Victoria Brown
16501 Jackson St.
Volente, Texas 78641-6044

Donald R. Burg
15787 Booth Cir.
Volente, Texas 78641-9684

Carl & Nila Campbell
7502 Reed Dr.
Volente, Texas 78641-9149

Nancy Carufel
8138 Joy Rd.
Volente, Texas 78641-9651

Scott Crossett
16407 Jackson St.
Leander, Texas 78641-6045

Connie Curtiss
7910 Lakeview st.
Leander, Texas 78641-6038

The Honorable Gerald Daugherty
Travis Co. Comm. Crt. Pct. 3
314 W. 11th St., Bldg. 1st Fl.
Austin, Texas 78701-2112

Gary M. Frame
7609 Davy Dr.
Volente, Texas 78641-9156

Richard Fraser
15740 Booth Cir.
Volente, Texas 78641-9684

David Gordon
15761 Booth Cir.
Volente, Texas 78641-9684

Judy Graci
15775 Booth Cir.
Volente, Texas 78641-9684

Mario & Sylvia Guzman
16411 Jackson St.
Volente, Texas 78641-6045

Mario Guzman
16413 Jackson St.
Volente, Texas 78641-6045

Justine Hlista
15807 Booth Cir.
Volente, Texas 78641-6018

Norma L. Hutchinson
7909 Lakeview St.
Volente, Texas 78641-9664

Suellen Jordan
8124 Beauregard Dr.
Volente, Texas 78641-6010

Sam W. Love
8111 Beauregard Dr.
Volente, Texas 78641-6010

Robert F. Mossman
14803 Arrowhead Dr.
Volente, Texas 78641-6136

Rusty Ray
P.O. Box 220
Austin, Texas 78767-0220

Richard Roucloux
8140 Joy Rd.
Volente, Texas 78641-9651

John & Judy Schlotzhauer
16415 Jackson St.
Volente, Texas 78641-6045

Clifton & Frances Seifert
16511 Jackson St.
Leander, Texas 78641-6044

Leonard A. Seifert
8006 Lakeview St.
Volente, Texas 78641-9671

Anne Steichen
15807 FM 2769
Volente, Texas 78641-9158

Walt Thompson
7504 Navajo Pass
Volente, Texas 78641-9128

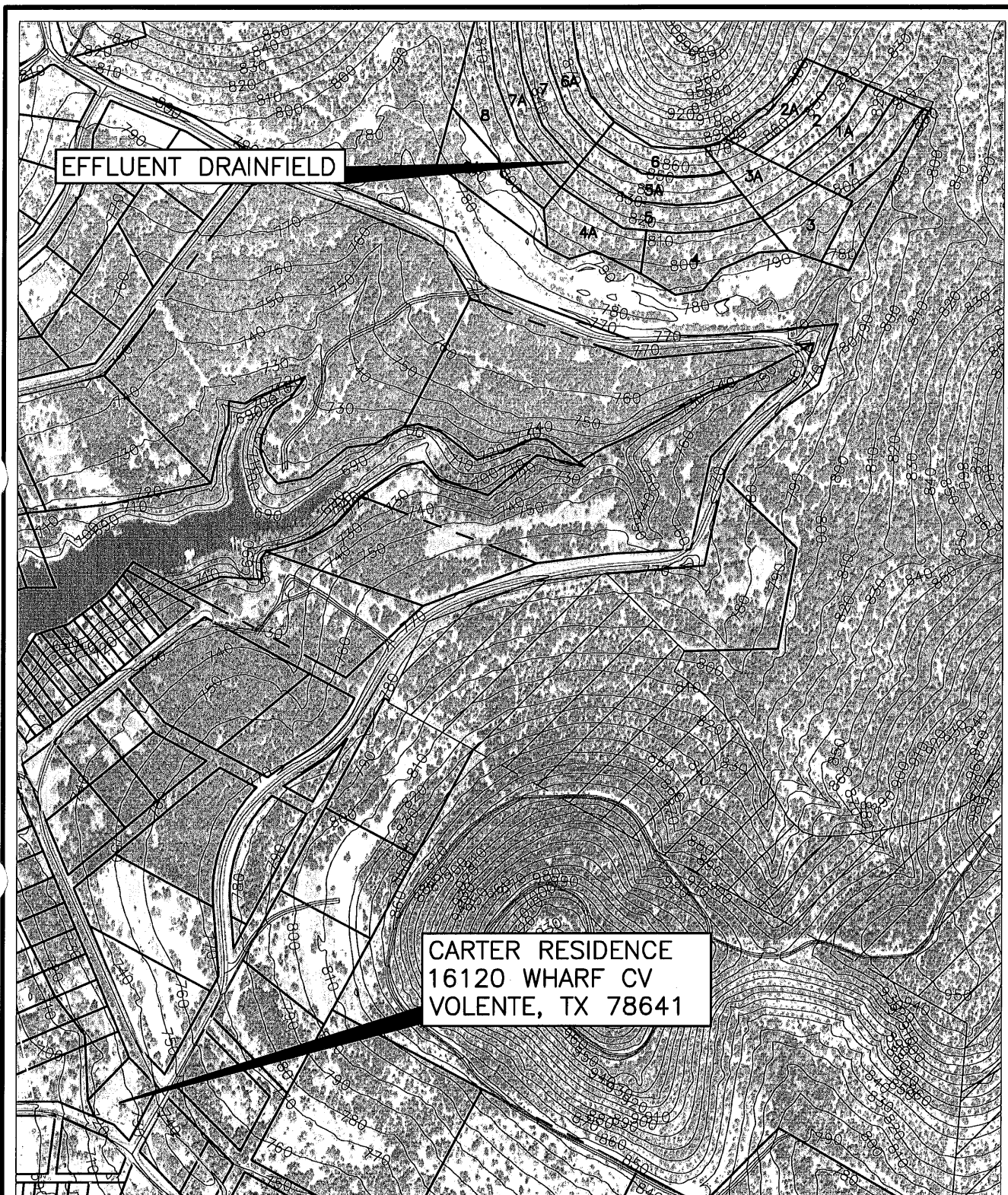
Dan Thost
8010 Lakeview St.
Volente, Texas 78641-9671

Allison Thrash
15100 FM 2769
Volente, Texas 78641-9139

John & Patricia Francis Thrash
10105 Longwoods Ct.
Houston, Texas 77024-5633

Jan Yenawine
15600 FM 2769
Volente, Texas 78641-9101

Jennifer Zufelt
Village of Volente
15403 Hill St.
Volente, Texas 78641-6161



BAKER-AICKLEN & ASSOCIATES, INC.
Engineers • Surveyors • GIS • Planning
2014 S. 11th St., Suite 100
Cedar Rapids, IA 52402
(319) 244-1100

SCALE: 1"=500'



PROJECT: VOLENTE WW SYSTEM

Exhibit 1

CLIENT: GRASON VOLENTE

JOB #: 1410-3-001

DATE: 2/9/2006

SHT 1 OF 1